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[Docket Number 301-92]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of Action Concerning the People's Republic of China's Protection of Intellectual Property and Provision of Market Access to Persons Who Rely on Intellectual Property Protection

AGENCY: Office of the United States Trade Representative

ACTION: Notice of determination pursuant to sections 301 and 304 of the Trade Act of 1974, as amended (Trade Act), 19 U.S.C. 2414.

SUMMARY: Pursuant to section 304(a)(1)(A)(ii) of the Trade Act, the United States Trade Representative (USTR) has determined that certain acts, policies and practices of the Chinese government with respect to the enforcement of intellectual property rights and the provision of market access to persons who rely on intellectual property protection are unreasonable and constitute a burden or restriction on U.S. commerce. Pursuant to section 304(a)(1)(B) and section 301(b), the USTR has determined that trade action is appropriate and that sanctions are appropriate. The sanctions will take the form of increasing duties on products listed in the attached Annex originating in China to 100 percent ad valorem.

EFFECTIVE DATE: USTR's determination as to actionability and the specific action to be taken was made on February 4, 1995. The increased duties will be assessed upon all products of China identified in the Annex to this notice that are entered, or withdrawn from warehouse for consumption, on or after February 26, 1995.

ADDRESS: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Deborah Lehr, Director for China and Mongolian Affairs (202) 395-5050, Joseph Papovich, Deputy Assistant USTR for Intellectual Property (202) 395-6864, or Thomas Robertson, Assistant General Counsel (202) 395-6800.

SUPPLEMENTARY INFORMATION: On June 30, 1994, China was identified as a priority foreign country under the "special 301" provisions of the Trade Act for its failure to enforce intellectual property rights or to provide fair and equitable market access to persons who rely on intellectual property protection. On the same day, the USTR initiated an investigation of those acts, policies and practices of China that were the basis for its identification as a priority foreign country. See

59 Fed. Reg. 35558 (July 12, 1994).

The effectiveness of China's enforcement regime is hampered by, among other things, internally inconsistent laws; a lack of transparency in the enforcement structure; a lack of protection for existing works; gaps in responsibility in the enforcement structure; a lack of consistent application of the laws throughout the central, provincial and local governments; a lack of funding, training and education; possible conflicts of interest; burdensome and discriminatory agency requirements that restrict foreign access to trademark protection; overly-broad compulsory licensing provisions; a failure of enforcement authorities to coordinate; and the absence of an effective border control mechanism.

In the area of market access, the most serious problems with the Chinese system are found in the areas of audio-visual products, sound recordings, and published written materials. Particular concerns include a hidden system of internal quotas, a lack of transparency, a lack of consistency in application, monopoly control over the importation and distribution of products embodying intellectual property, and a prohibition on the production or distribution of products embodying intellectual property that is not related to the content of those products.

Extension of Investigation, Proposed Determinations, and Public Comment

On January 5, 1995, the USTR published a notice that the six-month statutory deadline for the close of this investigation had been extended until February 4, 1995, in light of the complex and complicated nature of the issues involved. See 60 Fed. Reg. 1829, 1830 (January 5, 1995). In that notice, the USTR also published a proposed determination of action and request for public comment concerning the proposed action. The USTR proposed to determine that China's failure to enforce intellectual property laws or to provide market access to persons who rely on intellectual property protection is unreasonable and discriminatory and constitutes a burden or restriction on U.S. commerce. If that determination were finally made, the USTR also proposed to increase duties on certain products of China in an amount equivalent to the damaged caused by the Chinese acts, policies and practices which formed the basis of the investigation. The USTR published, as an annex to the notice, a list of products from which specific products could be selected for the imposition of increased duties.

In response to the January 5, 1995, Federal Register notice, the USTR and the Section 301 Committee received approximately 198 sets of written comments and heard the oral testimony of 53 witnesses at public hearings held on January 24-25, 1995. The comments primarily focused on the appropriateness of subjecting the products listed in the proposed retaliation list to an increase in duties, the levels at which duties on particular products should be set, and the degree to which an increase in

duties on particular products might have an adverse effect on U.S. consumers, workers and industries.

The United States estimates that the damage caused by China's failure to provide adequate intellectual property protection or market access for persons who rely on intellectual property protection is at least \$1.08 billion on an annual basis. The USTR has directed the Section 301 Committee to examine the effect on U.S. commerce of the export of infringing products from China to third countries.

Determination and Action

Numerous meetings have been held with the Chinese Government on these issues since the initiation of this investigation. While China has indicated it will take some action to address U.S. concerns, issues remain unresolved. Consequently, pursuant to section 304(a)(1) of the Trade Act, the USTR has determined (1) that China's acts, policies and practices which formed the basis of the investigation are unreasonable and discriminatory and constitute a burden or restriction on U.S. commerce, and (2) that trade action is appropriate. Pursuant to section 301(b) and 301(c), the USTR has decided to increase duties to 100 percent ad valorem upon goods described in the Annex to this notice that are of Chinese origin. These products were selected in light of the comments submitted to the Section 301 Committee in response to the January 5, 1995, notice and the testimony presented at the public hearing held on January 24-25, 1995.

Accordingly, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after February 26, 1995, the Harmonized Tariff Schedule of the United States (HTS) is hereby modified by inserting the provisions listed in the Annex to this notice in numerical sequence in subchapter III of chapter 99, with the content of the new subheadings and superior text set forth in the HTS columns designated "Heading/Subheading", "Article Description", and "Rates of Duty 1 General", respectively. The amount of trade affected by this action is equivalent to the value of the burden or restriction on U.S. commerce by the Chinese practices that formed the basis of the investigation.

Irving A. Williamson
Chairman, Section 301 Committee

ANNEX

Articles the product of the People's Republic of China:	
9903.50.01	Confections or sweetmeats, ready for consumption, put up for retail sale (provided for in subheading 1704.90.20).....100%
9903.50.02	Mushrooms, other than straw mushrooms, in containers each holding not more than 255 g, other than whole (including buttons) or sliced (provided in subheading 2003.10.00).....100%
9903.50.03	Citric acid (provided in subheading 2918.14.00).....100%
9903.50.04	Sacks and bags (including cones) of polymers of ethylene, with a side exceeding 75 mm in length, other than reclosable sacks and bags with integral extruded closure (provided in subheading 3923.21.00).....100%
9903.50.05	Picture frames and other household and toilet articles of plastics, (provided in subheading 3924.90.20 or 3924.90.55).....100%
9903.50.06	Cards, not punched, suitable for use as, or in making, jacquard cards; Jacquard cards and jacquard heads for power-driven weaving machines, and parts thereof; and Transparent sheeting of plastics containing 30 percent or more by weight of lead (all the foregoing provided for in subheading 3926.90.94).....100%
9903.50.07	Articles of plastics and articles of other materials of headings 3901 to 3914 (excluding miniature star bows of polypropylene and "pull bows" of polypropylene, the foregoing suitable for use on gift packages or in decorative applications, laboratory ware or reflective triangular signs for road use) (provided for in subheading 3926.90.98).....100%
9903.50.08	Surgical and medical gloves of vulcanized rubber other than hard rubber (provided for in subheading 4015.11.00).....100%
9903.50.09	Trunks, suitcases, and vanity cases with outer surface of leather, of composition leather, or of patent leather, (provided for in subheading 4202.11.00).....100%
9903.50.10	Cases, boxes, bags and similar containers, with outer surface of leather, or composition leather or of patent leather (excluding golf, travel, sports and similar bags) (provided for in subheading 4202.91.00).....100%
9903.50.11	Wooden frames for paintings, photographs, mirrors, or similar objects (provided for in heading 4414.00.00).....100%
9903.50.12	Statuettes and other ornaments, of wood (provided for in subheading 4420.10.00).....100%

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Articles the product of the People's Republic of China (con.):	
9903.50.13	Jewelry boxes, silverware chests, microscope cases, tool or utensil cases and similar boxes, cases and chests, all the foregoing of wood, lined with textile fabrics (provided for in subheading 4420.90.65).....100%
9903.50.14	Sacks and bags, including cones, having a base width of less than 40 cm, other than shipping sacks and multiwall bags but including grocer's bags (provided for in subheading 4819.40.00).....100%
9903.50.15	Greeting cards (provided for in subheading 4909.00.40).....100%
9903.50.16	Gloves, mittens and mitts, knitted or crocheted, containing 70 percent or more by weight of silk or silk waste (provided in 6116.99.75).....100%
9903.50.17	Handkerchiefs, containing 70 percent or more by weight of silk or silk waste (provided for in subheading 6213.10.10).....100%
9903.50.18	Shawls, scarves, mufflers, mantillas, veils and the like, containing 70 percent or more by weight of silk or silk waste (provided for in subheading 6214.10.10).....100%
9903.50.19	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather (other than house slippers, work footwear or tennis shoes, basketball shoes and the like), for misses, valued over \$2.50/pair (provided for in subheading 6403.99.90).....100%
9903.50.20	Sports footwear, tennis shoes, basketball shoes, gym shoes, training shoes and the like, with outer soles of rubber or plastics and uppers of textiles and having uppers of which over 50 percent of the external surface area (including any leather accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is leather; all the foregoing goods for women (provided for in subheading 6404.11.20).....100%
9903.50.21	Articles of jewelry and parts thereof, of precious metal other than silver, whether or not plated or clad with precious metal, not elsewhere specified or included (provided for in subheading 7113.19.50).....100%
9903.50.22	Kitchen ware (except teakettles) of stainless steel (provided for in subheading 7323.93.00).....100%
9903.50.23	Articles of copper, except brass plumbing goods, not elsewhere specified or included (provided for in subheading 7419.99.50).....100%
9903.50.24	Announce and record telephone answering machines (provided for in subheading 8520.20.00).....100%
9903.50.25	Cellular radio telephones designed for installation in motor vehicles (provided for in subheading 8525.20.60).....100%

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Articles the product of the People's Republic of China (con.):	
9903.50.26	Bicycles having both wheels not exceeding 55 cm in diameter (provided for in 8712.00.15).....100%
9903.50.27	Wrist watches (other than those of heading 9101), battery powered, with mechanical display only, having no jewels or only one jewel in the movement, not elsewhere specified or included (provided for in subheading 9102.11.45).....100%
9903.50.28	Metal furniture, other than household furniture, not elsewhere specified or included (provided for in subheading 9403.20.00).....100%
9903.50.29	Furniture parts of metal, not elsewhere specified or included (provided for in subheading 9403.90.80).....100%
9903.50.30	Non-electrical lamps and lighting fittings, not elsewhere specified or included (provided for in subheading 9405.50.40).....100%
9903.50.31	Surf boards, and other water-sport equipment, other than water skis; parts and accessories thereof, not elsewhere specified or included (provided for in subheading 9506.29.00).....100%
9903.50.32	Articles and equipment for sports or outdoor games, and parts and accessories thereof, not elsewhere specified or included (provided for in subheading 9506.99.60).....100%
9903.50.33	Fishing rods (provided for in subheading 9507.10.00).....100%